

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

PAMELA M. CARROLL

§

§

VS.

§

C.A. NO. 4:16-1626

(JURY)

STATE FARM LLOYDS

§

NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

STATE FARM LLOYDS (hereinafter, “State Farm”), Defendant in the above-styled and numbered cause, files this Notice of Removal of the present action from the 284th Judicial District Court of Montgomery County, Texas, to the United States District Court for the Southern District of Texas, Houston Division. In connection with this Notice of Removal, State Farm would respectfully show unto the Court as follows:

I.
PROCEDURAL BACKGROUND

1. Plaintiff, Pamela M. Carroll, filed this action on April 13, 2016 against State Farm Lloyds (incorrectly named State Farm Fire and Casualty Company) in 284th Judicial District Court of Montgomery County, Texas. That case was docketed under cause number 16-04-04509 (the “State Court Action”). Plaintiff subsequently filed her amended petition on June 6, 2016 correctly identifying State Farm Lloyds as the proper defendant.

2. State Farm was served with process on May 9, 2016, and filed its original answer on May 27, 2016. State Farm filed its amended answer on June 8, 2016.

3. State Farm files this Notice of Removal pursuant to 28 U.S.C. §1446 to remove the State Court Action from the 284th Judicial District Court of Montgomery County, Texas to the United States District Court for the Southern District of Texas, Houston Division.

4. Plaintiff's First Amended Petition filed in the State Court Action included a jury demand. State Farm filed its own jury demand in the State Court Action on June 8, 2016.

II.
NATURE OF SUIT

5. This lawsuit involves a dispute over the alleged non-payment of insurance benefits and the handling of Plaintiff's claim for damages allegedly caused by a hailstorm or windstorm "on or around June 12, 2014." Plaintiff's First Amended Petition at ¶ 8. Plaintiff asserts causes of action for breach of contract, breach of the duty of good faith and fair dealing, fraud, conspiracy to commit fraud, and violations of the Texas Insurance Code.

III.
BASIS OF REMOVAL

6. The Court has jurisdiction over this action under 28 U.S.C. § 1332 because there is and was complete diversity between all parties and the amount in controversy exceeds \$75,000, exclusive of interests and costs.

7. At the time this action was commenced, Plaintiff was, and still is, a resident of Montgomery County, Texas. Plaintiff's First Amended Petition at ¶ 3.

8. The citizenship of an unincorporated association is determined by the citizenship of each member of the entity, not by the state where the entity is organized. *See Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008); *see also, e.g., See Royal Ins. Co. v. Quinn-L Capital Corp.*, 3 F.3d 877, 882-83 (5th Cir. 1993) (citizenship of unincorporated association determined by citizenship of members); *Griggs v. State Farm Lloyds*, 181 F.3d 694, 698 (5th Cir. 1999) (finding that State Farm Lloyds is a citizen of Illinois); *Alonzo v. State Farm Lloyds*, No. SA-06-SA-0326-XR, 2006 WL 1677767, at *1 (W.D. Tex. June 12, 2006) (State Farm Lloyds held to be diverse from Texas plaintiffs); *Caballero v. State Farm Lloyds*, No. CA-

C-03-266, 2003 WL 23109217, at *1 (S.D. Tex. Oct. 31, 2003) (same); *Rappaport v. State Farm Lloyds*, No. 3:97-CV-2747, 1998 WL 249211, at *2 (N.D. Tex. May 8, 1998) (same).

9. State Farm is an association of individual underwriters authorized to conduct business in Texas as a Lloyd's plan insurer as defined and set out in Chapter 941 of the Texas Insurance Code. At the time this action commenced, State Farm was, and still is, an unincorporated insurance association whose underwriters were, and still are, citizens of states other than Texas. Accordingly, State Farm is not a citizen of the State of Texas. *See* attached Affidavit.

10. Plaintiff's First Amended Petition expressly alleges damages in excess of \$100,000 satisfying the "amount in controversy" requirement of 28 U.S.C. § 1332(a). Plaintiff's First Amended Petition at ¶ 70.

IV.
REMOVAL PROCEDURES

11. State Farm was served with process on May 9, 2016. This Notice of Removal is being filed on June 8, 2016. Accordingly, this Notice of Removal is timely filed within 30 days of when Defendant received a copy of Plaintiff's First Amended Petition and within one year of the commencement of this suit. *See* 28 U.S.C. § 1446(b).

12. Plaintiff filed this action in Montgomery County, Texas. The Houston Division of the Southern District of Texas encompasses Montgomery County, Texas. *See* 28 U.S.C. § 124(b)(2). Thus, venue is proper because this district and division embrace the place where the State Court Action is pending. *See* 28 U.S.C. § 1441(a).

13. All information and documents required by 28 U.S.C. § 1446(a) and by Local Rule 81 to be filed with this Notice of Removal are attached and indexed in Exhibit A.

14. A copy of this Notice of Removal will be filed with the Montgomery County District Clerk's office and served on the Plaintiff promptly. *See* 28 U.S.C. § 1446(d).

V.
PRAYER

State Farm Lloyds respectfully requests that the above-styled action now pending in the 284th Judicial District Court of Montgomery County, Texas, be removed to this Honorable Court pursuant to the Court's diversity jurisdiction, that upon final trial, judgment be rendered that Plaintiff take nothing by her suit against State Farm Lloyds, and for such other and further relief to which State Farm Lloyds may be justly entitled.

Respectfully submitted,

GERMER PLLC

By: 
Dale M. "Rett" Holiday
State Bar No. 00792937
Federal I.D. No. 21382
Three Allen Center
333 Clay Street
Houston, Texas 77002
Telephone: (713) 650-1313
Facsimile: (713) 739-7420
rholiday@germer.com

**ATTORNEY-IN-CHARGE FOR DEFENDANT,
STATE FARM LLOYDS**

OF COUNSEL:

GERMER PLLC

Gregory M. Howard
State Bar No. 24042989
Federal I.D. No. 619850
Three Allen Center
333 Clay Street, Suite 4950
Houston, Texas 77002
Telephone: (713) 650-1313
Facsimile: (713) 739-7420
Email: ghoward@germer.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument was forwarded to all known counsel pursuant to the Federal Rules of Civil Procedure on this the 8th day of June, 2016.

Ahsan Hasnani
Scott Hunziker
THE VOSS LAW FIRM, P.C.,
26619 Interstate 45 South
The Woodlands, Texas 77380

VIA CM/ECF & FACSIMILE



DALE M. "RETT" HOLIDAY